

29

IN THE PRIVY COUNCIL

No. 15 of 1973

O N A P P E A L
FROM THE COURT OF APPEAL, JAMAICA

B E T W E E N :

PARAMOUNT BETTING LIMITED APPELLANT

- and -

THE ATTORNEY GENERAL FOR
JAMAICA and THE COLLECTOR
GENERAL RESPONDENTS

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
- 4 JAN 1975
25 RUSSELL SQUARE
LONDON, W.C.1.

TRAVERS SMITH, BRAITHWAITE
& CO.,
3, Throgmorton Avenue,
London, EC2N 2DA

Solicitors for the
Appellant

CHARLES RUSSELL & CO.,
Hale Court,
Lincolns Inn,
London, WC2A 3UL

Solicitors for the
Respondents

(i)

IN THE PRIVY COUNCIL

No. 15 of 1973

ON APPEAL
FROM THE COURT OF APPEAL JAMAICA

B E T W E E N :

PARAMOUNT BETTING LIMITED

APPELLANT

- and -

THE ATTORNEY GENERAL FOR JAMAICA
and THE COLLECTOR GENERAL

RESPONDENTS

RECORD OF PROCEEDINGS

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2.	Affidavit of Frank Spaulding in support with Exhibits "A" and "B" filed	24th March, 1971
3.	Notice of discontinuance filed	8th April, 1971
4.	Notice of appointment to hear originating summons filed	21st April, 1971
5.	Entry of appearance filed	28th April, 1971
6.	Notice of Entry of appearance filed	28th April, 1971
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7.	Affidavit of Service of Notice of Appeal and Supplementary Grounds of Appeal	6th September, 1971
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10.	Notice of Change of Attorney	27th May, 1972
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1.

IN THE PRIVY COUNCIL

No. 15 of 1973

O N A P P E A L

FROM THE COURT OF APPEAL JAMAICA

B E T W E E N :

PARAMOUNT BETTING LIMITED

APPELLANTS

- and -

THE ATTORNEY GENERAL FOR JAMAICA
and THE COLLECTOR GENERAL

RESPONDENTS

RECORD OF PROCEEDINGS

10

No. 1

ORIGINATING SUMMONS SUIT NO:
C.L. 331 of 1971

In the High
Court
Jamaica

No. 1

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN THE HIGH COURT OF JUSTICE

Originating
Summons

15th April
1971

Between PARAMOUNT BETTING LTD. Plaintiff
And THE COLLECTOR GENERAL First Defendant
And THE ATTORNEY GENERAL
OF JAMAICA Second Defendant

20

LET THE ATTORNEY GENERAL of Jamaica and/or the
Collector General for Jamaica c/o Collector General's
Department P.O. Box 466, Kingston Jamaica within
eight days after the service of this Summons on them
inclusive of the day of such service cause an
appearance to be entered for them to this summons
which is issued upon the application of Paramount
Betting Limited of 109-111, Barry Street in the

In the High Court
Jamaica

parish of Kingston who prays this Honourable Court for the determination of the following question of construction to Law to wit:

No. 1

Originating Summons

15th April 1971

(cont.)

WHETHER the provisions of Section 3 of the Betting Gaming and Lotteries (Bookmaker's Levy Scheme) Overseas Horse Races Amendment Order 1968 require a bookmaker to pay a levy under this Order with respect to a betting office operated by the Bookmaker when such betting office does not engage in transactions dealing with overseas horse racing and engages only in transactions dealing with local horse races.

10

THE ATTORNEY GENERAL is joined by virtue of the Crown Proceedings Act.

Dated the 15th day of April 1971.

THIS SUMMONS was taken out by GLADYS M. MORRISON-JOHNSON of 21 Duke Street in the parish of Kingston Solicitor for the abovenamed Paramount Betting Limited.

The Defendants may appear hereto by making appearance either personally or by Solicitor at the office of the Registrar of the Supreme Court.

20

NOTE: If the Defendants do not enter appearance within the time and at the place abovementioned such order will be made and proceedings taken as the Judge may think just and expedient.

No. 2(a)

Affidavit of Frank Spaulding sworn 8th April 1971

No. 2(a)

AFFIDAVIT OF FRANK SPAULDING IN SUPPORT OF ORIGINATING SUMMONS

SUIT NO. C.L. 331 of 1971

30

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN THE HIGH COURT OF JUSTICE
COMMON LAW

Between PARAMOUNT BETTING LIMITED Plaintiff
And THE COLLECTOR GENERAL FOR JAMAICA First Defendant
And THE ATTORNEY GENERAL OF JAMAICA Second Defendant

I, FRANK SPAULDING, being duly sworn make oath

and say as follows:

In the High
Court
Jamaica

No. 2(a)

Affidavit
of Frank
Spaulding
sworn 8th
April 1971

(cont.)

1. That I am the Managing Director of Paramount Betting Limited, a Limited Liability Company with registered offices at 109-111, Barry Street in the parish of Kingston, which said Company carries on the licensed business of bookmaking. I reside and have my true place of abode at 1, Waltham Avenue, Kingston 13 in the parish of St. Andrew.

10 2. That this Company operates licensed betting offices and betting transactions are carried on in respect to local horse racing as well as overseas horseracing.

3. That the Company operates 35 betting offices which conduct betting transactions in relation to local horseracing only, and does not conduct any betting transactions in relation to overseas horseracing.

20 4. By virtue of the Betting Gaming and Lotteries (Bookmaker's Levy Scheme) Overseas Horse Races Amendment Order 1968 which came into operation on the 4th August 1968 the Order states inter alia:

"The Monetary contribution payable by each bookmaker shall be a levy at the rate of £6 (\$12) per week in respect of each betting office operated by him or any servant or agent of his".

30 5. The Collector General of Jamaica has demanded to be paid a levy at the rate of £6 (\$12) per week in respect of the thirty-five (35) betting shops listed in paragraph 3 although those betting offices do not conduct transactions on overseas races.

6. The Company maintains that the levy in respect of overseas horse racing cannot be made with regard to betting offices which conduct transactions on local horse racing only.

40 7. By letter dated the 21st day of September 1968, a copy of which is attached and marked "A" for Identity the Company stated its views to the Collector General. The thirty-five betting shops are listed in this letter.

In the High Court
Jamaica

No. 2(a)

Affidavit
of Frank
Spaulding
sworn 8th
April 1971
(cont.)

8. By letter dated the 17th day of November 1969 which original letter is attached and marked "B" for identity the Collector General replied stating the view of his Department.

9. The Collector General has issued summons in the Resident Magistrate's Court, Sutton Street, Kingston to collect varying amounts from the Company claimed to be due and owing by the Company under the levy scheme, the interpretation of which is in dispute.

10

10. The Company therefore humbly prays that this Honourable Court will interpret the provisions of the Betting Gaming and Lotteries Act 1965 and the Betting Gaming and Lotteries (Bookmakers Levy Scheme Overseas Horse Races) Amendment Order 1968 made thereunder to relate only in respect of the said Order to a betting office operated by the bookmaker in which transactions related to overseas horse races are carried on and that the betting offices which carry on transactions solely relating to local horse races are not subject to the levy imposed by this Order.

20

SWORN to at 66, North Street, in the parish of Kingston this 8th day of April 1971 before me.

(Sgd.) F.E. SPAULDING

(Sgd.) A. Walker
JUSTICE OF THE PEACE
ST. ANDREW.

30

FILED by GLADYS M. MORRISON-JOHNSON of 21 Duke Street, Kingston Solicitor for and on behalf of the Plaintiff whose address for service is that of the said Solicitor.

5.

No. 2(b)

EXHIBIT "A"

PARAMOUNT BETTING LIMITED
109-111, Barry Street,
Phone 22994,27178

Ref: 1876-d/d 3/9/68 & 1964 d/d 13/9/68.

41018

21st September 1968.

The Collector General,
Kingston, Jamaica.

10 Dear Sir,

I again wish to thank you for the courtesy and patience granted me yesterday during our conference in your office.

20 With reference to your letters of the 3rd September 1968 and the 12th of September 1968 respectively, enclosed is receipt from the Collector of Taxes Kingston for cheque No. 343/276001 in the sum of One hundred and eighty six pounds (£186.0.0.) and cheque No. 343/276002 for Two hundred and twenty eight pounds (£228.0.0.) totalling Four hundred and fourteen pounds (£414.0.0.) to satisfy your demands for further amounts in respect of the Levy on Overseas Horse Racing. However as indicated on the occasion of our discussion on the 20th of September 1968, we make this payment under protest for the various reasons set out below.

30 During the relevant period to which these levies relate, we did not conduct any business which included transactions on overseas horse-races at the Betting Offices in question. You will note from our returns that this was so.

Paragraph (3) of the Betting Gaming and Lotteries (Bookmaker's Levy Scheme) (Overseas Horse-Races) Order 1967 as amended by the (Amendment) Order 1968 (No: 107) provided that (1) A monetary contribution shall be payable by every bookmaker who in any levy period conducts a business which includes betting transactions on overseas horse races, so, however, that nothing in this Order shall be construed as:-

In the High
Court
Jamaica

No. 2(b)

Exhibit "A"
referred to
in the
Affidavit
of Frank
Spaulding
8th April
1971

In the High Court
Jamaica

No. 2(b)

Exhibit "A"
referred to
in the
Affidavit
of Frank
Spaulding
8th April
1971

(cont.)

- (a) requiring a bookmaker to pay a monetary contribution in respect to any betting transaction made prior to the Commencement of this Order;
- (b) affecting monetary contributions which are levied under any scheme established under the Act.

Para 3 Sec 2

The monetary contribution payable by each bookmaker shall be a levy at the rate of Six Pounds per week in respect of each betting office operated by him or by any servant or agent of his.

10

Para 3 (a) a betting office shall be deemed -

(i) to be operated as soon as a betting office licence in respect thereof is in force; and

(ii) to continue to be operated until the person to whom the betting office licence in respect thereof was granted (hereinafter referred to as "The Licence") or any person succeeding to the rights of the licensee under the Act or any regulations made thereunder, notifies the Collector General in writing that the office is closed and submits the licence (if in force) for alteration or cancellation; and

20

(b) the week during which any betting office commences or ceases to operate shall, for the purpose of the levy, be deemed to be a week.

30

Section (3) states when operating within the meaning of the law is "deemed": However, it will be noted that section (1) of this paragraph makes it clear that the operating within the meaning of the Law is that in respect of the conducting of business which includes Betting transactions on overseas horseracing.

40

It would appear that in administering this law

a separate licence ought to be granted for the operating of overseas horseracing (see para. 3(3)(ii)).

Your record will show that we have never operated Overseas Horse Races at Thirty One (31) of our Betting Offices, since we have been Bookmakers.

10 In view of the fact that we have not operated Overseas Horse Races at the Betting Offices in dispute during the period under review, and do not intend to do so presently in keeping with paragraph (3)(A)(ii). You are hereby notified that the following offices are closed in respect of operation on Overseas Horse-Races.

In the High Court
Jamaica

No. 2(b)

Exhibit "A"
referred to
in the
Affidavit
of Frank
Spaulding
8th April
1971

(cont.)

Branch No:	Address	Branch Managers
	348 51 Slipe Pen Rd., Kingston 5	Mr. H. Walker
	352 73 Spanish Town Rd., Kingston 13	Mr. O. Williams
20	358 42A Slipe Road, Kingston 5	Miss Hamilton
	366 239 Tower Street, Kingston	Mr. V. Parkinson
	373 23 Slipe Pen Road, Kingston	Mr. L. Chang
	383 74 Old Hope Road, Kingston 6	Mr. V. Lee
	387 40½ Half-Way-Tree Rd., Kingston 5	Mrs. B. Kow
	407 O'Connor's Bldg., Gutters	Mr. G.O. O'Connor
	408 40 King St., Spanish Town	Mr. V. Lyew
	410 13 West St., Old Harbour	Mrs. M. Rhone
	412 Race Course, Clarendon	Mr. Chin See Que
30	413 Hayes, Clarendon	Mr. Stanley Rodney
	417 Rocky Point Settlement	Mr. Alfred Gulchuran
	418 Raymond Settlement, Hayes	Mr. Ramsook
	421 Graval Grounds - Clarendon	Mr. Alvin Chin
	422 York Pen, Clarendon	Mrs. Mavis Chin
	424 2 Stork St. May Pen	Mr. V. Kenny
	425 Guinep Tree, May Pen	Mr. L. Chin
	428 Race Course, Clarendon	Mr. H. Watt
	429 Frankfield	Mr. W. Chang
40	430 Milk River	Mr. A. Howell
	347 95 Molynes Road, Kingston 10	Miss J. Fenton
	388 114 Constant Spring Road, Kingston 8	Mr. J. Chase
	396 Old Harbour Bay	Mr. H. Myton
	406 2 East St., Old Harbour	Mr. M. Roberts
	415 44 Main Street, May Pen	Miss H. Morgan

<u>In the High Court Jamaica</u>	<u>Branch No:</u>	<u>Address</u>	<u>Branch Manager</u>
No. 2(b) Exhibit "A" referred to in the Affidavit of Frank Spaulding 8th April 1971 (cont.)	416	Christian Pen, St. Catherine	Mrs. I. Williamson
	420	Lionel Town, Clarendon	Mr. F. Francis
	426	Free Town	Mr. V. Timol
	435	Hope Bay, Portland	Mr. K. Duncan
	508	Gayle, St. Mary	Mr. E.A. Ferguson
	516	McKenley Crescent	Mr. H. Steel
	530	14½ North St., Kingston	Miss S. Williams 10
	533	Port Morant, St. Thomas	Miss E. Williams
	81	84 Old Harbour Road	Mrs. E. Chung (recently from Track Price Plus)

The relative licences herein enclosed are submitted for alteration and immediate return requested, as we do not intend to cease our operation on local races at these offices.

As arising from our conference on the 20th April 1968, we shall make other representations in due course to secure a refund with interest on the amount involved under protest.

20

Yours truly,

F.E.S.

F.E. Spaulding

Managing Director.

No. 2(c)

No. 2(c)

Exhibit "B"
Affidavit
of Frank
Spaulding
8th April
1971

EXHIBIT "B"

COLLECTOR GENERAL'S DEPARTMENT
P.O. BOX 466,
KINGSTON, JAMAICA

30

No: 2149
41018

17th November 1969.

Gentlemen,

I refer to your letter dated the 21st September 1968 whereby you forwarded to me thirty-five (35) Betting Office Licences for the levy period 1968/1969 in respect of which you stated that no

betting transactions on overseas horseraces were being conducted and requested an amendment of the licences.

In the High
Court
Jamaica

2. You further declined to continue paying the levy fee of \$12.00 per week - then \$6 - in respect of these Betting Offices.

No. 2(c)

Exhibit "B"
Affidavit
of Frank
Spaulding
8th April
1971

3. Legal opinion was sought in the matter and the Law Officers of the Crown have advised as follows:

(cont.)

10 "No provision is made by either the Law or the Regulations for betting office licences to be endorsed to show that the licence is in respect of local or overseas races or both. The test to be applied is that set out in paragraph 3(1) of the Order i.e. whether the bookmaker conducts a business which includes betting transactions on overseas horse races. In my opinion the bookmaker's business must be considered as a whole, so that if he holds several betting office licences but engages in betting transactions on overseas races at some of the premises for which he has betting office licences he would still be regarded as conducting a business which includes betting transactions on overseas horse races.

20

Paragraph 3(3) of the Order states that a betting office shall be deemed -

- (1) to be operated as soon as a betting office licence in respect thereof is in force; and
- (2) to continue to be operated until the person to whom the betting office licence in respect thereof was granted (hereinafter referred to as "the licensee") or any person succeeding to the rights of the licence under the Act or any regulations made thereunder, notifies the Collector General in writing that the office is closed and submits the licence (if in force) for alteration or cancellation.
- 30

40 This means that as long as the bookmaker has in force a business which includes betting transactions on overseas horse races, he will be required to pay the weekly contribution".

In the High Court
Jamaica

No. 2(c)

Exhibit "B"
Affidavit
of Frank
Spaulding
8th April
1971

(cont.)

4. Would you therefore remit to his office the amounts in respect of the Levy short remitted for the levy period 1968/69 and 1969/70 as per statements attached.

I am, Gentlemen,
Your obedient servant,

H.A. Andrews
for Actg. Collector General

Mr. F.E. Spaulding,
Managing Director,
Paramount Betting Limited,
109-111 Barry Street,
KINGSTON

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Levy Period	No. of Shops	No. of Shops Levy Paid on	Amount of Levy Paid	Amount short collected
5.4.69	98	71	£426	£162
12.4.59	98	64	£384	£204
19.4.69	98	64	£384	£204
3.5.69	98	64	£384	£204
10.5.69	98	64	£384	£204
17.5.69	98	64	£384	£204
24.5.69	100	64	£384	£216
31.5.69	100	64	£384	£216
7.6.69	100	64	£384	£216
14.6.69	100	64	£384	£216
21.6.69	100	64	£384	£216
28.6.69	100	64	£384	£216
5.7.69	100	66	£384	£204
12.7.69	100	66	£396	£204
19.7.69	100	66	£396	£204
26.7.69	103	66	£396	£222
2.8.69	102	66	£396	£216
9.8.69	103	66	£396	£216
16.8.69	102	67	£402	£210
23.8.69	103	67	£402	£216
30.8.69	103	67	£402	£216
6.9.69	103	67	£402	£216
13.9.69	104	68	£402	£216
20.9.69	104	68	£402	£216
				£5034

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Levy Period	No. of Shops	No. of Shops Levy Paid on	Amount of Levy Paid	Amount short collected
17.8.68	109	71	426	£228
31.8.68	109	71	426	£228
7.9.68	109	71	426	£228
14.9.68	109	71	426	£228
21.9.68	109	71	426	£228
28.9.68	110	71	426	£234
5.10.68	106	71	426	£210
12.10.68	106	71	426	£210
19.10.68	107	71	426	£216
26.10.68	107	71	426	£216
2.11.68	107	71	426	£216
9.11.68	107	71	426	£216
16.11.68	107	71	426	£216
23.11.68	107	71	426	£216
30.11.68	107	71	426	£216
7.12.68	107	71	426	£216
14.12.68	107	71	426	£216
21.12.68	107	71	426	£216
28.12.68	107	71	Nil	£642
4.1.69	107	71	426	£216
11.1.69	107	71	426	£216
18.1.69	108	71	426	£222
25.1.69	108	71	426	£222
1.2.69	108	71	426	£222
8.2.69	108	71	426	£222
15.2.69	108	71	426	£222
22.2.69	108	71	426	£222
1.3.69	108	71	426	£222
8.3.69	108	71	426	£222
15.3.69	108	71	426	£222
22.3.69	108	71	426	£222
29.3.69	108	71	426	£222
				£7470

In the High
Court
Jamaica

No. 2(c)

Exhibit "B"
Affidavit
of Frank
Spaulding
8th April
1971

(cont.)

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In the High Court
Jamaica

No. 3

JUDGMENT OF HENRY J.

No. 3
Judgment of
Henry J.
4th June
1971

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN THE HIGH COURT OF JUSTICE
COMMON LAW 331/71

Between PARAMOUNT BETTING CO. LTD. Plaintiff
And THE COLLECTOR GENERAL
FOR JAMAICA
And THE ATTORNEY GENERAL Defendants

Mr. R.C. Rattray and Mr. Winston Spaulding
instructed by Mrs. G. Morrison-Johnson for the
Plaintiff. 10

Mr. A.B. Edwards for the Defendants.

This is an Originating Summons brought by the
Plaintiff Paramount Betting Company Limited against
the Defendants the Collector General for Jamaica
and the Attorney General "for the determination of
the following question of construction of Law to
wit:

"Whether the provisions of section 3 of the
Betting, Gaming and Lotteries (Bookmakers' Levy
Scheme) (Overseas Horse Races) Amendment Order 1968
requires a bookmaker to pay a levy under this Order
with respect to a betting office operated by such
bookmaker when such betting office does not engage
in transactions dealing with overseas horse racing
and engages only in transactions dealing with local
horse races". 20

The Plaintiff is a bookmaker within the
meaning of paragraph 2 of the Betting, Gaming and
Lotteries (Bookmakers' Levy Scheme) (Overseas Horse
Races) Order 1967 hereinafter referred to as the
1967 Order. The Plaintiff conducts a business
which includes betting transactions on overseas
horse races and the Originating Summons is brought
under section 531 of the Judicature (Civil Procedure
Code) Law Chapter 177 for the determination of the
construction of paragraph 3 of the 1967 Order as
amended by paragraph 3 of the Betting, Gaming and 30

Lotteries (Bookmakers' Levy Scheme) (Overseas Horse Races) (Amendment) Order 1968 hereinafter referred to as the amending Order. Strictly speaking the amending Order having served its purpose of amending the 1967 Order is now spent and the Originating Summons therefore incorrectly seeks the determination of the construction of "section 3 of (the amending order)". It is clear however, that paragraph 3 of the 1967 Order as amended by paragraph 3 of the amending Order is the provision to which reference is intended to be made, and I would not by reason of this defect strike out the Originating Summons. Counsel for the Defendants has also urged that proceedings for the recovery of the levy allegedly due from the Plaintiff have been commenced in the Resident Magistrate's Court, that the Supreme Court rarely exercises its discretion to determine questions of construction on Originating Summons where an action has already been brought, and that in the instant case the Court ought not to exercise its discretion to make the determination sought. I am of the view that the Court ought to make the determination sought, particularly having regard to the fact that, as I have been informed, the proceedings in the Resident Magistrate's Court have been adjourned pending such determination.

In the High Court
 Jamaica

No. 3

Judgment of
 Henry J.

4th June
 1971

(cont.)

The provision sought to be construed is as follows:

"3(1) A monetary contribution shall be payable by every bookmaker who in any levy period conducts a business which includes betting transactions on overseas horse races, so, however, that nothing in this Order shall be construed as -

(a) requiring a bookmaker to pay a monetary contribution in respect to any bookmaking transaction made prior to the commencement of this Order;

(b) affecting monetary contributions which are levied under any other scheme established under the Act.

(2) The monetary contribution payable by each bookmaker shall be a levy at the rate of six pounds per week in respect of each

In the High Court
Jamaica

No. 3

Judgment of
Henry J.

4th June
1971

(cont.)

betting office operated by him or by
any servant or agent of his.

(3) For the purpose of this paragraph

(a) a betting office shall be deemed -

(i) to be opened as soon as a
betting office licence in
respect thereof is in force;
and

(ii) to continue to be operated
until the person to whom the
betting office licence in
respect thereof was granted
(hereinafter referred to as
"the licensee") or any
person succeeding to the
rights of the licensee under
the Act or any regulations
made thereunder notifies the
Collector General in writing
that the office is closed
and submits the licence (if
in force) for alteration or
cancellation and

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(b) the week during which any betting
office commences or ceases to
operate shall for the purpose of
the levy be deemed to be a week."

It is the submission of Counsel for the
Plaintiff that the word "operated" in subparagraph
(2) of paragraph 3 above must be construed to mean
"operated for the transaction of business which
includes betting transactions on overseas horse
races" and that therefore the levy imposed is not
payable in respect of betting offices not so
operated. In support of this he refers to
item (v) of subparagraph (b) of paragraph 4 of the
1967 Order which speaks of "betting offices
operated within the meaning of subparagraph (2) of
paragraph 3" and to subparagraph (3) of paragraph 3
which provides that a betting office shall be
deemed to continue to operate until the licensee
notifies the Collector General that the office is closed

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and submits the licence for alteration or cancellation. He submits that in this context the only meaningful alteration which could be made in the licence (which is not transferable) is an alteration to indicate that the betting office is closed for betting transactions on overseas horse races and that the licence no longer covers those transactions. Following on this he submits that the 1967 Order as amended must contemplate the issue of betting office licences restricted to particular types of transaction or excluding particular types of transactions. This is on the face of it an attractive argument, but in my view involves giving either to the word "operated" or to the words "betting office" an unnecessarily restricted meaning. Had this been the intention it would have been simple to define either the words "operated" or the words "betting office" to indicate this restricted meaning. There is no such definition and it seems to me that the reference in item (v) of subparagraph (b) of paragraph 4 to "betting offices operated within the meaning of subparagraph (2) of paragraph 3" is simply a reference to "betting offices operated by him (the bookmaker) or by any servant or agent of his" as set out in that subparagraph. The alteration referred to in subparagraph (3) of paragraph 3 is in my view an alteration which may be required in consequence of the temporary suspension of the operations of a betting office, to indicate the date from which it is suspended and the date from which it is to continue in force, when outright cancellation is not required or contemplated. Counsel for the Plaintiff submits that there is nothing in the enabling Act which prohibits the issue of a betting office licence for a limited purpose. Section 9 of the Act provides inter alia that where a betting office licence is in force in respect of any premises paragraph (b) of subsection (1) of section 4 (which prohibits the use of the premises for effecting betting transactions) shall not apply to the use of those premises for the effecting of betting transactions with or through the holder of the licence or any servant or agent of his." If the intention of Parliament had been to permit the issue of licences of limited application it seems to me that this section would have referred to betting transactions authorised by the betting office licence rather than to betting transactions simpliciter. I can find nothing either in the enabling Act or in the regulations

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Jamaica

No. 3

Judgment of
Henry J.

4th June
1971

(cont.)

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1971

(cont.)

made thereunder to suggest that there is any intention to permit the issue of betting office licences of limited application.

Counsel for the Plaintiff also submits - and I agree - that in making the 1967 Order the Minister was dealing with a particular category of bookmakers as he is entitled to do under paragraph (a) of subsection (2) of section 17 of the enabling Act. This category is the category of bookmakers whose business includes betting transactions on overseas horse races. It is submitted that the levy imposed must be on those transactions and that to place an interpretation on that Order which would make it applicable to other transactions would be to place an interpretation which makes the Order ultra vires in this respect. To my mind what the Order does - and quite properly does - is to impose the levy on bookmakers of the category described and to provide by reference to the betting offices operated by those bookmakers the basis on which the levy is to be assessed. It is to be observed that the levy is imposed not on the betting office but on the bookmaker. Accordingly in my opinion a bookmaker who falls within the category described is liable to pay the appropriate monetary contribution calculated by reference to the number of betting offices operated by him or by his servant or agent, regardless of whether or not betting transactions on overseas horse races are carried on in all these betting offices. The question posed by the Originating Summons is therefore answered in the affirmative.

There will be no order as to costs.

Sgd. K.C. Henry

Judge of the Supreme Court

4th June 1971

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17.

No. 4

AMENDED NOTICE AND GROUNDS OF APPEAL
APPEAL NO: 21 of 1971

In the
Court of
Appeal
Jamaica

No. 4

IN THE COURT OF APPEAL

Between PARAMOUNT BETTING LIMITED Plaintiff/
Appellant
And THE ATTORNEY GENERAL & Defendants/
THE COLLECTOR GENERAL Respondents

Amended
Notice and
Grounds of
Appeal

6th August
1971

10 TAKE NOTICE that the Court of Appeal will be
moved as soon as Counsel can be heard on behalf of
the abovenamed Plaintiff/Appellant on appeal from
the whole of the judgment herein of the Honourable
Mr. Justice Henry in Chambers given at the trial of
this action on the 4th day of June 1971 whereby it
was adjudged and declared (i) that the provisions
of section 3 of the Betting Gaming and Lotteries
(Bookmaker's Levy Scheme) Overseas Horse Races
20 Amendment Order 1968 required a Bookmaker to pay a
levy with respect to a Betting Office operated by
such Bookmaker when such betting office does not
engage in transactions dealing with Overseas Horse
Racing and engages only in transactions dealing
with local horse racing consequently answering the
question posed in the Originating Summons in the
affirmative.

FOR AN ORDER (ii)

- 30 (a) That the said Judgment and declaration
be set aside and reversed.
- (b) That a judgment be entered and a
declaration made answering the question
asked in the Originating Summons in the
negative.
- (c) That the Court may make any such order as
it may deem fit in the circumstances.

AND FURTHER TAKE NOTICE that the grounds of Appeal are:

- (a) The Learned Judge erred in law in holding
that the provisions of Section 3 of the
Betting Gaming and Lotteries (Bookmaker's
Levy Scheme) Overseas Horse Races Order

In the
Court of
Appeal
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No. 4

Amended
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(cont.)

1967 as amended by the Betting Gaming and Lotteries (Bookmaker's Levy Scheme) Overseas Horse Races Order 1968 require a Bookmaker to pay a levy with respect to a betting office operated by such Bookmaker when such betting office does not engage in transactions dealing with overseas horse racing and engages only in transactions dealing with local horse racing. "

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DATED the 6th day of August 1971.

(Sgd.) Gladys M. Morrison-Johnson

SOLICITOR FOR THE ABOVE NAMED PLAINTIFF/
APPELLANT

To: The Registrar,
Court of Appeal,
Kingston.

And To: The Crown Solicitor,
Solicitor for the abovenamed Defendants/
Respondents

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FILED by GLADYS M. MORRISON-JOHNSON of 21 Duke Street, Kingston, Solicitor for and on behalf of the Plaintiff/Appellant whose address for service is that of the said Solicitor.

19.

No. 5

JUDGMENT OF LUCKHOO J.A.

In the
Court of
Appeal
Jamaica

No. 5

Judgment of
Luckhoo J.A.

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IN THE COURT OF APPEAL
CIVIL APPEAL No. 21 of 1971

BEFORE The Hon. Mr. Justice Luckhoo, Presiding.
The Hon. Mr. Justice Edun, J.A.
The Hon. Mr. Justice Graham-Perkins, J.A.

B E T W E E N

PARAMOUNT BETTING LIMITED

Plaintiff/
Appellant

AND

THE ATTORNEY GENERAL AND
THE COLLECTOR GENERAL

Defendants/
Respondents

C. Rattray, Q.C. and W. Spaulding for the appellant.

Mrs. E. Hines and M.A. Ziadie for the respondents.

November 1, 2; December 20, 1972

The appellant, Paramount Betting Ltd., a bookmaker within the meaning of that term in the Betting, Gaming and Lotteries (Bookmakers' Levy Scheme) (Overseas Horse Races) Order, 1967, conducts a business which includes betting transactions on overseas horse races. The appellant's business is conducted at a number of betting offices at some of which betting transactions on overseas horse races are not effected. The appellant applied to a judge of the Supreme Court in chambers by way of originating summons for the determination of the following question -

"Whether the provisions of section 3 of the Betting, Gaming and Lotteries (Bookmakers' Levy Scheme) (Overseas Horse Races) Amendment Order, 1968 require a bookmaker to pay a levy under this Order with respect to a betting office operated by the bookmaker when such betting office does not engage in transactions dealing with overseas horse racing and engages only in transactions dealing with local horse races."

As the judge in chambers recognised the reference in

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the summons to the 1968 Order should be to paragraph 3 of the Betting, Gaming and Lotteries (Bookmakers' Levy Scheme) (Overseas Horse Races) Order, 1967 as amended by paragraph 3 of the 1968 Order. The judge in chambers answered the question in the affirmative. The appellant now appeals to this Court against the judgment of the judge in chambers.

The 1967 Order was made by the Minister of Finance in the exercise of the powers conferred on the Minister by ss. 16, 17 and 18 of the Betting, Gaming and Lotteries Act, 1965 (No. 34). Section 16 of that Act empowers the Minister to establish schemes of monetary contributions from bookmakers. Section 17(1) provides that such monetary contributions shall be paid by way of a levy in respect of each levy period to which a scheme relates. Section 17(2) provides as follows -

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"(2) Any scheme established pursuant to section 16 may contain such ancillary provisions as the Minister considers desirable to give effect to the scheme and, without prejudice to the generality of the foregoing, may include provision -

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(a) for bookmakers to be divided for the purpose of the levy into different categories;

(b) for the amount, if any, payable by way of the levy by any particular bookmaker to be determined by reference to the category into which he falls; and

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(c) for the issue by the Collector General of notices in relation to and certificates of exemption from the levy.

Section 18 provides for the payment of monetary contributions by way of levy to the Collector General at such times as may be specified in the scheme and for accounting for such levy. The provisions of ss. 16, 17 and 18 came into operation on December 13, 1965 by notice published in the Gazette under s. 1(2) of the 1965 Act.

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The first Order made in the exercise of the powers conferred on the Minister by ss. 16, 17 and 18 of the 1965 Act was the Betting, Gaming and Lotteries (Bookmakers' Levy Scheme) Order, 1965 which came into force and effect from January 1, 1966. That Order provides for the payment of a monetary contribution by a bookmaker who in any levy period conducts a business which includes betting transactions on horse races held in Jamaica. Paragraph 3(2) of that Order prior to its amendment in 1966 provided as follows -

"(2) The monetary contributions payable by each bookmaker shall be a levy in respect of each horse racing day in relation to which he conducts business as aforesaid equal to the sum of -

(a) 10 per centum of the total of all stakes on bets accepted by the bookmaker in respect of horse races to be held on that day; and

(b) the amount of sixty pounds

PROVIDED that -

(i) if a bet is laid off the stakes in relation thereto received by the second bookmaker shall not be taken into account as regards such second bookmaker for the purposes of this sub-paragraph;

(ii) the amounts staked in relation to void bets shall not be taken into account for the purposes of this sub-paragraph; and

(iii) the levy shall not exceed -

(a) one-third of the total amount, subject to sub-paragraphs (i) and (ii) of this proviso, of all stakes on bets accepted by the bookmaker in respect horse races to be held on that day; or

(b) sixty pounds, whichever is the greater."

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(cont.)

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By the Betting, Gaming and Lotteries (Bookmakers' Levy Scheme) (Amendment) Order 1966, paragraph 3 of the 1965 Order was amended, the figures "7½" being substituted for the figures "10" and the figures "40" being substituted for the figures "60" in subparagraph (2) of that paragraph.

In 1967, the Betting, Gaming and Lotteries (Bookmakers' Levy Scheme) (Overseas Horse Races) Order, 1967 was made and came into effect on the 1st July, 1967. Paragraph 3(1) of that Order provides for the payment of a monetary contribution by a bookmaker who in any levy period conducts a business which included betting transactions on overseas horse races and it also provides that nothing in that Order shall be construed as affecting monetary contributions which were levied under any other scheme established under the 1965 Act.

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Paragraph 3(2) of the 1967 Order before its amendment in 1968 provided as follows -

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"(2) The monetary contributions payable by each bookmaker shall be a levy at the rate of 7½ per centum of the total amount of all stakes on bets accepted by the bookmaker in his business in respect of overseas horse races:

Provided that -

(a) if a bet is laid off the stakes in relation thereto received by the second bookmaker shall not be taken into account as regards such second bookmaker for the purposes of this sub-paragraph;

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(b) the amounts staked in relation to void bets shall not be taken into account for the purposes of this sub-paragraph.

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It follows that a levy was payable by a bookmaker who in a levy period conducted a business which

included betting transactions on overseas horse races, such levy being a percentage of the total amount of all stakes on bets accepted by the bookmaker (other than bets laid off and void bets) in respect of overseas horse races during the levy period. The bookmaker had to make a weekly return relating to bets accepted by him in his business during that week in relation to overseas horse races in the form specified in the Order and pay the amount of the levy as appeared from the form to be payable. The 1967 Order was amended by the Betting, Gaming and Lotteries (Bookmakers' Levy Scheme) (Overseas Horse Races) (Amendment) Order, 1967 with effect from August 4, 1968. Paragraph 3(2) of the original 1967 Order was deleted and the following provisions now form sub-paragraphs (2) and (3) of paragraph 3 -

"(2) The monetary contribution payable by each bookmaker shall be a levy at the rate of six pounds per week in respect of each betting office operated by him or by any servant or agent of his."

"(3) For the purposes of this paragraph -

(a) a betting office shall be deemed -

(i) to be operated as soon as a betting office licence in respect thereof is in force; and

(ii) to continue to be operated until the person to whom the betting office licence in respect thereof was granted (hereinafter referred to as "the licensee") or any person succeeding to the rights of the licensee under the Act or any regulations made thereunder, notifies the Collector General in writing that the office is closed and submits the licence (if in force) for alteration or cancellation; and

(b) the week during which any betting office commences or ceases to

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operate shall, for the purposes
of the levy, be deemed to be a
week."

A consequential amendment to the particulars to be included in the prescribed form of return is that the form shall show "the number of betting offices operated within the meaning of sub-paragraph (2) of paragraph 3 during that week". For the appellant it was submitted that the provisions of paragraph 3(2) of the 1967 Order as substituted by paragraph 3 of the 1968 Order impose a levy on a bookmaker who conducts a business which includes betting transactions in respect of overseas horse races, only in regard to such betting offices operated by him or by any servant or agent of his as engage in betting transactions dealing with overseas horse races and not in respect of betting offices operated by him or by any servant or agent of his as engage in betting transactions otherwise than in respect of overseas horse races.

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It was urged on behalf of the appellant that the reference in sub-paragraph (3) of paragraph 3 of the 1967 Order as amended by the 1968 Order to the submission of a betting office licence to the Collector General for alteration in the event of the betting office being closed is to a betting office being closed for the purpose of accepting betting transactions on overseas horse races while remaining open for the purpose of accepting betting transactions on local horse races. There is nothing contained in the Act (including the schedules thereto) or in the Betting Gaming and Lotteries Regulations, 1965, (including the prescribed form of a betting office licence) which recognises such a distinction in the grant or restriction in the operation of a betting office licence. I can see no warrant for such a construction being put upon that part of the sub-paragraph. In my view what is contemplated is closure of the betting office because it is no longer required for conducting the bookmaker's business in which case the licence will be cancelled or because it is closed temporarily to business e.g. for structural alterations, in which case there will be an alteration of the period during which the licence is operative and so the betting office will not be deemed under sub-paragraph (3) of paragraph 3 of the Order to

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be continued to be operated while the office remains closed.

Another argument advanced by attorney for the appellant in support of the construction he sought to put upon paragraph 3(2) of the amended Order was that the weekly return required to be made by the bookmaker relates solely to bets entered into in respect of overseas horse races as was the case under the 1967 Order before amendment and that therefore the return of the "number of betting offices operated within the meaning of subparagraph (2) of paragraph 3 of the Order during the week..." required to be made relates to the number of betting offices at which bets were entered into in respect of overseas horse races. However, the particulars required to be supplied and the form of return required to be made by the bookmaker cannot be decisive of the question to be answered for in any event such particulars in that form are necessary in order to discover whether in respect of overseas horse races at a race meeting in the levy period bets validly laid off and void bets total less than the amount of bets entered into in respect of that race meeting in which case the bookmaker would have in the levy period under consideration conducted a business which included betting transactions on overseas horse races and so would be liable to pay the levy imposed by the Order. The question still remains - is a bookmaker liable to pay a levy in respect of all betting offices he or his servants or agents operate regardless of whether or not betting transactions on overseas horse races are entered into at some only of those offices? To decide that question one is thrown back to the determination of what paragraph 3(2) of the Order means. In my view it means that a bookmaker who in any levy period falls within the category of bookmakers contemplated by paragraph 3(1) must pay a levy at the rate of £6 (~~£~~12) per week (in the levy period) in respect of each and every betting office operated by him or by any servant or agent of his in the levy period regardless of whether or not betting transactions on overseas horse races were conducted at some only of those offices. As the judge in chambers correctly observed "what the Order does... is to impose the levy on bookmakers on the category described and to provide by reference to the betting offices operated by those bookmakers the basis on which the levy is to be assessed". He further

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observed correctly that the levy is imposed not on the betting office but on the bookmaker. The judge in chambers was correct in answering in the affirmative the question asked in the appellant's summons.

For these reasons I would dismiss the appeal and affirm the judgment of the learned judge in chambers.

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Judgment of
Graham-
Perkins
J.A.

20th
December
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No. 6

JUDGMENT OF GRAHAM-PERKINS J.A.

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I agree.

No. 7

Judgment of
Edun J.A.

20th
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No. 7

JUDGMENT OF EDUN J.A.

After the passing of The Betting, Gaming and Lotteries (Bookmakers' Levy Scheme) Order 1965 (hereinafter referred to as "Order 1965") bookmakers paid a levy only on local horse racing business. It was not until the affirmation of The Betting Gaming and Lotteries (Bookmakers' Levy Scheme) (Overseas Horse Races) Order 1967 (hereinafter referred to as "Order 1967") by the House of Representatives on June 13, 1967 that a monetary contribution was payable by every bookmaker who in any levy period conducted a business which included betting transactions on overseas horse races; the rate of levy was then stipulated as 7½ per centum of the total amount of all stakes on bets accepted by the bookmaker in respect of overseas horse races.

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The rate of levy was altered by The Betting, Gaming and Lotteries (Bookmakers' Levy Scheme)

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(Overseas Horse Races) (Amendment) Order 1968, (hereinafter referred to as "Order 1968") and which shall be read as one with the principal order 1967. Under orders 1975, 1967 and 1968, a bookmaker was required to make a return of bets and levy which had to show among other things, the total amounts of bets entered into and the amounts of laid off and void bets. It must be noted that if a bookmaker conducted a business which did not include betting on overseas horse races, he was nevertheless obliged to state in his return that no bets were so accepted: para: 4(c) of Order 1967.

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In this appeal, the Paramount Betting Ltd. (hereinafter referred to as "the appellant") sought by originating summons before a Judge in Chambers determination of the following question of construction of law, to wit:-

"Whether the provisions of section 3 of The Betting, Gaming and Lotteries (Bookmakers' Levy Scheme) (Overseas Horse Races) Amendment Order 1968 requires a bookmaker to pay a levy under this order with respect to a betting office operated by such bookmaker when such betting office does not engage in transactions dealing with overseas horse racing and engages only in transactions dealing with local horse races."

I find it necessary to state the relevant amendments of Order 1967 effected by Order 1968:-

Order 1967

Para. 3(2) - "The monetary contributions payable by each bookmaker shall be at the rate of $7\frac{1}{2}$ per centum of the total amount of all stakes on bets accepted by the bookmaker in his business in respect of overseas horse races:

Provided that -

(a) if a bet is laid off the stakes in relation thereto received by the second bookmaker shall not be taken into account as regards such second

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Jamaica

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Judgment of
Edun J.A.

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bookmaker for purposes of this
sub-paragraph;

- (b) the amount staked in relation to void bets shall not be taken into account for purposes of this sub-paragraph.

Order 1968

The following provisions have been substituted for the above, thus:-

Para. 3(2) - "The monetary contributions payable by each bookmaker shall be a levy at the rate of six pounds per week in respect of each betting office operated by him or by any servant or agent of his. 10

(3) - For the purpose of this paragraph

(a) a betting office shall be deemed -

- (i) to be operated as soon as the betting office licence thereof is in force; and 20

- (ii) to continue to be operated until the person to whom the betting office licence in respect thereof was granted, notifies the Collector General in writing that the office is closed and submits the licence (if in force) for alteration or cancellation; and 30

(b)"

The appellant submitted that a betting office can be considered as "closed" if he is opened for business on local horse races but accepted no betting transactions on overseas horse races and for that purpose he had so notified the Collector General whose duty it was, to endorse the licence to effect the alteration of his business,

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accordingly. The Attorney General and the Collector General (hereinafter referred to as "the respondents") took the view that as long as the bookmaker has in force a business which includes betting transactions on overseas horse races he was required to pay the weekly contribution of £6 (£12) in respect of each betting office, although such betting offices did not conduct any transactions on overseas horse races.

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(cont.)

10 The learned Judge decided the question posed in the originating summons in the affirmative. In rejecting the appellant's contention, he has stated, in his reasons for judgment, that -

1. there was no intention in any of the relevant legislation to give the word "operated" or "betting office" a meaning restricted to particular types of transactions. In other words, a betting office operated within the meaning of para 3(2) of Order 1967 simply refers to a betting office operated by him;
- 20 2. the alteration referred to in para 3(2) of Order 1967 was in his view required in consequence of a temporary suspension of the operations of a betting office and the date from which it is to continue in force when outright cancellation is not required or contemplated;
- 30 3. he could find nothing indicating the intention of Parliament to permit the issue of licences of limited application, that is, either to local or overseas horse racing; and
4. the betting levy was imposed not on the betting office but on the bookmaker.

40 The differences of opinion in construing subparagraph 3(2) of Order 1968 are the cause of the problems before us. However, it is clear that para. 3(2) and provisos (a) and (b) of Order 1967 meant that laid off and void bets were not to be taken into account in computing the levy of $7\frac{1}{2}$ per centum of the total amount of all stakes accepted by the bookmaker on overseas horse races. It is clear too, by the deletion of those provisions and the substitution of paras. 3(2) and 3(a)(i) and (ii) of Order 1968, if -

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1. the bookmaker has a betting office licence in force, he is liable to pay a levy of £6 per week because he is deemed to be operating that betting office, but
2. that liability ceases to continue, if he notifies the Collector General (a) that his office is closed and (b) submits his licence for alteration, because in those circumstances, he shall not be deemed to continue to operate that betting office.

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The facts establish beyond dispute that the appellant wrote the Collector General a letter dated September 21, 1968 informing him:-

1. that he did not conduct any business which included transactions on overseas horse races for 1968/1969 levy period and that fact was stated in his returns of bets and levy which he filed from time to time;
2. he notified the Collector General that his 35 betting offices were closed in respect of operations on overseas horse races; and
3. he submitted the relative betting office licences (then in force) for alteration and immediate return.

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The Collector General in reply dated November, 17, 1969, noted the contents of the appellant's letter, referred to the opinion of the law officers of the Crown and concluded by demanding the amounts "short-remitted" for the levy period 1968/1969 and amounts not yet paid for 1969/1970 levy periods. The Collector General then commenced proceedings in the Resident Magistrates' Courts to recover the levies demanded and the appellant then proceeded to the Judge in Chambers for the construction of the point of law affecting his liability for the levy. He has now appealed against the decision of the learned Judge to the Court of Appeal.

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In my view, the word "closed" must not be

given the restricted meaning of "a temporary suspension" of the operation of a betting office. If a betting office licence is in force, it must mean that the bookmaker can operate his betting office in the business of accepting bets on local horse races; his office is thus not physically closed. The relevant provisions of para. 3(1) of Order 1967 (not deleted) are as follows:-

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"3(1) A monetary contribution shall be payable by every bookmaker who in any levy period conducts a business which includes betting transactions on overseas horse races, so, however, that nothing in this Order shall be construed as -

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(cont.)

- (a)
- (b) affecting monetary contributions which are levied under any other scheme established under the Act."

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The only other levy scheme in existence relating to bookmakers under the Act is the bookmakers' levy scheme on local horse races. Brett M.R. in Lion Marine Ins. Assn. v Tucker (1883) 53 L.J.Q.B., at p.188 had this to say on a question of construction. "..... for it is, I consider, a well settled rule that in construing a statute or a document it is not right to follow merely the words of the statute or document, taking them in their ordinary grammatical meaning: but it is necessary also to apply those words to the subject-matter dealt with in the statute or document, and then to construe them with reference to that subject-matter, unless there is something which compels one so to construe them. The rule is, I think, that the ordinary meaning of words used in the English language must be applied to the subject-matter under consideration."

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Thus, if the word "closed" is construed to mean a temporary suspension in the operation of the betting office, then I am at a loss to understand that if there is a betting office licence in force, why in the particular betting office business cannot be conducted on local horse races only and be considered as "closed" in respect of operations on overseas horse races if the particular bookmaker notified the Collector General to that effect. Why must the Collector General refuse to

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endorse his licence accordingly?

Here, the appellant is faced with another argument and that is, that there is no provision made by either the law or regulations for betting office licences to be endorsed to show that the licence is in respect of local or overseas races or both. There is no doubt that before the passing of order 1967 there was only one category which a bookmaker's business came under for purposes of the levy scheme, and that is, local horse races. After Order 1967, there were two distinct categories created - local and overseas horse races. Section 17 of The Betting, Gaming and Lotteries Act 1965 (hereinafter referred to as "Act No. 34 of 1965") has given the Minister authority to make ancillary provisions as he considers desirable to give effect to the scheme. Those may provide -

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(a) for bookmakers to be divided into different categories for the purpose of the levy;

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(b) for the amount, if any payable, by way of levy by any particular bookmaker to be determined by reference to the category into which he falls; and

(c) for the issue by the Collector General of notices in relation to and certificates of exemption from the levy.

The Collector General admitted, and as advised by the law officers, stated that there was no provision by either the law or regulations for betting office licences to be endorsed to show that the licences issued are in respect of local or overseas horse races or both. Now, whose failure is that? And how can the Collector General seek to benefit from the neglect of its rule-making authority? In my view, section 17 of Act No. 34 of 1965 expresses the clear intention of Parliament of conferring a right on a bookmaker to conduct his business in the category he chooses and to pay by way of levy an amount by reference to the category under which his business falls. After Order 1967, the two categories of the bookmaking business becomes distinct and identifiable. In that respect the Collector General was empowered

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to issue notices in relation thereto and certificates of exemption from the levy.

10 It is true, that section 17 of Act No. 34 of 1965 uses the words: "Any scheme ... may contain such ancillary provisions as the Minister considers desirable to give effect to the scheme and, may include provisions." It may be argued that those words merely made something legal or possible which there would otherwise be no right or authority to do. "It is, however, a well-recognised canon of construction, as Lord Cairns said in Julius v Bishop of Oxford (1880) 5 AC 214, 225-241 that 'Where a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out, and with regard to whom a definition is supplied by the Legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised and the court will require it to be exercised'. And Lord

20 Blackburn said: 'The enabling words are construed as compulsory whenever the object of the power is to effectuate a legal right.'" Craie's on Statute Law, 7th. Ed. p.285.

30 In that case, it was held that the words "it shall be lawful" in a statute are "plainly and unambiguously, merely permissive, empowering, and conferring on the person named a right to do a specified thing, but where the object of the enactment is to effectuate a legal right, whether public or private, they are to be construed as compulsory. This is equally the case where the enabling power is given by the word 'may'". Unlike the facts in Julius's Case, in the instant case there is a legal right in the appellant to be entitled to an exemption from paying a levy in the category of business which he did not operate and in respect of which he earned no income upon which such levy could be based. Thus, I hold, that as soon as Order 1967 was affirmed by the House of Representatives, it was

40 the duty of the Minister or the rule-making authority to make ancillary provisions to give effect to the different categories then involved in the levy scheme. And, for the amount payable by way of the levy by any particular bookmaker to be determined by reference to the category into which his business falls.

The case of Julius v Bishop of Oxford (supra) was

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considered and applied by the House of Lords in Padfield v Ministry of Agriculture (1968) 1 AER 694 and among the points decided by a majority of four Law Lords to one, it was held, in that case, that although the Minister had full and unfettered discretion under section 19(3) of the Agricultural Marketing Act (U.K.) 1958, he was bound to exercise it lawfully. At p.699, Lord Reid had this to say:

"Parliament must have conferred the discretion with the intention that it should be used to promote the policy and objects of the Act; the policy and objects of the Act must be determined by construing the Act as a whole, and construction is always a matter for the Court. In a matter of this kind it is not possible to draw a hard and fast line, but if the Minister, by reason of his having misconstrued the Act or for any other reason, uses his discretion as to thwart or run counter to the policy and objects of the Act, then our law would be very defective if persons aggrieved were not entitled to the protection of the court."

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The appellant in the instant case, is an aggrieved person; affected by the levy scheme and if the facts must be taken as true, he was paying a levy upon income he had not earned, and was entitled to claim, as he has claimed, a certificate of exemption from the particular levy.

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The learned Judge in Chambers also expressed the opinion that the betting levy was imposed not on the betting office but on the bookmaker. Accordingly, he stated, that a bookmaker who conducted business which included betting on overseas horse races was liable to pay appropriate monetary contributions by reference to the number of betting offices operated by him or his servant or agent, regardless of whether or not betting transactions on overseas horse races were carried on in all those betting offices.

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That may well be true, but up to a point - that is, until the person to whom the betting office licence was granted notifies the Collector General that he no longer or at all carried on business upon which the levy at the rate of six

10 pounds per week in respect of each betting office, could be based. But when the appellant-bookmaker in this case does what he is in law entitled to do - to claim an exemption from such a levy - he is told that no provisions existed for betting office licences to be endorsed to show that the operation of his betting office was in respect of local horse races only. We know, too, that the ancillary provisions to give effect to the levy scheme in accordance with the clear intention of Parliament - are, merely procedural.

For the reasons given, I am of the view that para. 3 of Order 1968 does not require a bookmaker to pay a levy of six pounds per week in respect of each betting office operated by him, provided -

1. he does no business in overseas horse races;
2. he so notifies the Collector General and submits his licence for alteration, and
- 30 3. if he does so, he cannot in a court of law be denied redress, upon mere failure of the Minister or rule-making authority to provide procedural forms.

I would allow the appeal, set aside the judgment of the learned Judge in Chambers, and award the necessary costs in favour of the appellant.

LUCKHOO J.A.:

In the result the appeal is dismissed without any order as to costs.

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In the
Court of
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Jamaica

No. 8

ORDER

No. 8

Order

20th
December
1972

IN THE COURT OF APPEAL
CIVIL APPEAL NO. 21 of 1971

Between	PARAMOUNT BETTING LIMITED	Plaintiff/ Appellant
And	THE ATTORNEY GENERAL	
And	THE COLLECTOR GENERAL	Defendant/ Respondents

BEFORE	Honourable Mr. Justice Luckhoo	10
	Honourable Mr. Justice Edun	
	Honourable Mr. Justice Graham-Perkins.	

THE 20th day of December, 1972.

This Appeal having come on for hearing on the 1st and 2nd day of November, 1972 and the 20th day of December, 1972 and it having been ordered by a majority on the 20th day of December, 1972 that the Appeal be dismissed. IT IS THIS DAY ADJUDGED that the Appeal herein be dismissed with no Order as to costs and that the Order of the trial judge be affirmed.

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(Sgd.) C.J. Mitchell
DEPUTY REGISTRAR

ENTERED by WINSTON SPAULDING of No. 44 Duke Street, Kingston, Attorney-at-Law for and on behalf of the Plaintiff/Appellant whose address for service is that of its said Attorney.



ORDER GRANTING CONDITIONAL LEAVE TO
APPEAL TO HER MAJESTY IN COUNCIL

In the
Court of
Appeal
Jamaica.

No. 9

IN THE COURT OF APPEAL
CIVIL APPEAL No. 21 of 1971

Order
granting
conditional
leave to
appeal to
Her Majesty
in Council

BETWEEN PARAMOUNT BETTING LIMITED

Plaintiff/
Appellant

AND THE ATTORNEY GENERAL

AND THE COLLECTOR GENERAL

Defendant/
Respondents

29th
January
1973

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THE 29th JANUARY, 1973.

The Application on behalf of the Plaintiff/
Appellant for Leave to Appeal to Her Majesty in
Council coming on for hearing on the 29th day of
January before their Lordships Mr. Justice Fox,
Mr. Justice Edun and Mr. Justice Graham-Perkins,
and after hearing Mr. Carl Rattray Q.C., and
Mr. Winston Spaulding, Attorney-at-Law on behalf of
the Plaintiff/Appellant and Mrs. Elizabeth Hines,
Attorney-at-Law on behalf of the Defendant/
Respondents and on referring to the Affidavit of
Winston Spaulding, Attorney-at-Law of the Supreme
Court of Judicature of Jamaica sworn to on the 8th
day of January, 1973 filed herein, IT IS HEREBY
ORDERED that Provisional Leave to Appeal to Her
Majesty in Council be granted on condition that
within ninety days:-

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(a) Good and sufficient security to the
satisfaction of the Court is given in the sum of
\$1,000 for the due prosecution of the Appeal and
the payment of cost as required by Order 4 (a) of
the Orders regulating procedures in appeals to
the Privy Council; and

(b) The Appellant shall take the necessary
steps to prepare the records as required by Order
4 (b) of the Orders regulating procedures in
appeals to the Privy Council.

AND IT IS HEREBY FURTHER ORDERED that the
costs of this Application be costs in the cause.

40

.....
REGISTRAR

In the
Court of
Appeal
Jamaica

This Order is entered by WINSTON SPAULDING of No. 44 Duke Street, Kingston, Attorney-at-Law for and on behalf of the Plaintiff/ Appellant herein, whose address for service is that of its said Attorney.

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Order
granting
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leave to
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Her Majesty
in Council

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January
1973

(cont.)

No. 10

Order
granting
final
leave to
appeal to
Her Majesty
in Council

25th May
1973

No. 10

ORDER GRANTING FINAL LEAVE TO APPEAL
TO HER MAJESTY IN COUNCIL

IN THE COURT OF APPEAL
CIVIL APPEAL No. 21 of 1971

BETWEEN	PARAMOUNT BETTING LIMITED	Plaintiff/ Appellant	10
AND	THE ATTORNEY GENERAL		
AND	THE COLLECTOR GENERAL	Defendants/ Respondents	

BEFORE THE HONOURABLE Mr. Justice Fox.
THE HONOURABLE Mr. Justice Edun.
THE HONOURABLE Mr. Justice Robinson (Acting).

The 25th day of May, 1973.

This Application for Final Leave to Appeal to Her Majesty in Council having come on for hearing this day and after hearing Winston Spaulding, Attorney-at-Law on behalf of the Plaintiff/Appellant and Mrs. Elizabeth Hines, Attorney-at-Law on behalf of the Defendants/ Respondents and on referring to the Affidavit of

39.

Winston Aloysius Spaulding, Attorney-at-Law of the Supreme Court of Judicature of Jamaica sworn to on the 27th day of April, 1973 and filed herein IT IS HEREBY ORDERED THAT Final Leave to Appeal to Her Majesty in Council be granted.

AND IT IS FURTHER ORDERED that the Formal Order herein of the Court be made and filed.

Cecil James Mitchell

REGISTRAR

In the
Court of
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Jamaica

No. 10

Order
granting
final
leave to
appeal to
Her Majesty
in Council

25th May
1973

(cont.)

10 ENTERED by WINSTON SPAULDING of No. 44 Duke Street, Kingston, Attorney-at-Law for and on behalf of the Plaintiff/Appellant whose address for service is that of its said Attorney.

IN THE PRIVY COUNCIL

No. 15 of 1973

O N A P P E A L
FROM THE COURT OF APPEAL, JAMAICA

B E T W E E N :

PARAMOUNT BETTING LIMITED APPELLANT
- and -
THE ATTORNEY GENERAL FOR
JAMAICA and THE COLLECTOR
GENERAL RESPONDENTS

RECORD OF PROCEEDINGS

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